

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Nora Mead Brownell, and Suedeene G. Kelly.

Eastern Shore Natural Gas Company

Docket No. CP06-53-000

ORDER ISSUING CERTIFICATE

(Issued June 13, 2006)

1. On January 20, 2006, Eastern Shore Natural Gas Company (Eastern Shore) filed an application under section 7(c) of the Natural Gas Act (NGA) requesting authorization to construct and operate approximately 55 miles of mainline extension and looping and two new delivery points in Pennsylvania and Delaware. As discussed below, the requested authorization is granted.

Background and Proposal

2. Eastern Shore proposes to construct and operate facilities as part of its long-term program of upgrading and expanding its system in order to accommodate existing transportation customers and market growth. Eastern Shore has filed various expansion projects over the last several years. In this latest request, Eastern Shore proposes to construct facilities in three phases, with facilities to be placed in service by November 1, 2006, November 1, 2007, and November 1, 2008. Cumulatively, the project would add a total of 47,350 dekatherms (dt) to Eastern Shore's system capacity on a peak day.

3. Phase I construction consists of: (1) a 1.5 mile loop of 16-inch diameter pipeline in Chester County, Pennsylvania; (2) a 0.6 mile loop of 16-inch diameter pipeline in Chester County, Pennsylvania; (3) 7.8 miles of 16-inch diameter pipeline looping in New Castle County, Delaware; (4) a 6.1 mile loop of 10-inch diameter pipeline in New Castle County, Delaware; (5) a 4.0 mile loop of 10-inch diameter pipeline in Sussex County, Delaware; (6) a 15.0 mile extension of 6-inch diameter pipeline in Sussex County, Delaware; and (7) two regulator stations in Sussex County, Delaware. The cost of the proposed Phase I upgrade is estimated at \$17,370,148.

4. In Phase II, Eastern Shore proposes to construct: (1) 7.0 miles of 16-inch diameter pipeline looping in New Castle County, Delaware; and (2) a 4.0 mile loop of 10-inch

diameter pipeline in Sussex County, Delaware. The cost of the proposed Phase II upgrade is estimated at \$7,950,579.

5. In Phase III, Eastern Shore proposes to construct 9.0 miles of 16-inch diameter pipeline looping in New Castle County, Delaware. The cost of the proposed Phase III upgrade is estimated at \$8,285,733.

6. Eastern Shore requested that its customers evaluate their incremental capacity requirements for the next three heating seasons, commencing November 1, 2006, 2007 and 2008, in order to develop a long-term plan that would take advantage of economies of scale, optimize system design and minimize environmental impacts. In keeping with this long-term plan, Eastern Shore conducted an open season for requests for capacity from 2006-2008. In response, Eastern Shore executed 15-year precedent agreements for firm transportation services representing full subscription of the entire capacity created by the expansion project.¹

7. Eastern Shore proposes to charge its existing Part 284 Rate Schedule FT transportation rate as an initial rate to the firm shippers which have subscribed to the proposed incremental capacity. Since estimated revenues from the new firm service will exceed the estimated cost of service for the facilities, Eastern Shore asserts that existing customers will not be adversely affected. Eastern Shore requests a preliminary determination that the cost of the project qualifies for rolled-in rate treatment, stating that the proposal would enhance system reliability and flexibility without any adverse rate impact. The application includes a 10-year cost and revenue study that projects that for each of the first 10 years of the operation of the expansion facilities, anticipated revenues would exceed the anticipated cost of service.

Notice and Interventions

8. Notice of Eastern Shore's application was published in the *Federal Register* on February 8, 2006 (71 Fed. Reg. 6,460). Salisbury-Wicomico Economic Development, Inc, Chesapeake Utilities Corporation, Elkton Gas, and Easton Utilities Commission filed

¹ Eastern Shore executed precedent agreements with Delmarva Power and Light Company for 19,600 dt/d, Chesapeake Utilities Corporation-Delaware Division for 21,850 dt/d, Chesapeake Utilities Corporation-Maryland Division for 4,250 dt/d, Easton Utilities for 900 dt/d, and Elkton Gas – 750 dt/d.

timely motions to intervene supporting the application.² Somerset County Economic Development Commission filed an untimely motion to intervene supporting the application. We will grant the motion, since to do so at this stage of the proceeding will not delay, disrupt, or otherwise prejudice the proceeding or other parties.³ No protests or interventions in opposition were received.

Discussion

9. Since the proposed construction and operation of proposed facilities involve the transportation of natural gas in interstate commerce, such proposal is subject to the Commission's jurisdiction under NGA sections 7(c) and (e).

Certificate Policy

10. On September 15, 1999, the Commission issued a Policy Statement to provide guidance as to how we will evaluate proposals for certificating new construction.⁴ The Policy Statement established criteria for determining whether there is a need for a proposed project and whether the proposed project will serve the public interest. The Policy Statement explains that in deciding whether to authorize the construction of major new pipeline facilities, the Commission balances the public benefits against the potential adverse consequences. Our goal is to give appropriate consideration to the enhancement of competitive transportation alternatives, the possibility of overbuilding, subsidization by existing customers, the applicant's responsibility for unsubscribed capacity, the avoidance of unnecessary disruptions of the environment, and the unneeded exercise of eminent domain in evaluating new pipeline construction.

11. Under this policy, the threshold requirement for pipelines proposing new projects is that the pipeline must be prepared to financially support the project without relying on subsidization from the existing customers. The next step is to determine whether the applicant has made efforts to eliminate or minimize any adverse effects the project might have on the applicant's existing customers, existing pipelines in the market and their

²Timely, unopposed motions to intervene are granted by operation of Rule 214 of the Commission's Rules of Practice and Procedure.

³ 18 CFR § 385.214(d) (2006).

⁴ *Certification of New Interstate Natural Gas Pipeline Facilities*, 88 FERC ¶ 61,227 (1999), *order clarifying statement of policy*, 90 FERC ¶ 61,228, *order further clarifying statement of policy*, 92 FERC ¶ 61,094 (2000) (*Policy Statement*).

captive customers, or landowners and communities affected by the new construction. If residual adverse effects on these interest groups are identified after efforts have been made to minimize them, the Commission will evaluate the project by balancing the evidence of public benefit to be achieved against the residual adverse effects. This is essentially an economic test. Only when the benefits outweigh the adverse effects on economic interests will the Commission then proceed to complete the environmental analysis where other interests are considered.

12. As noted above, the threshold requirement is that the pipeline must be prepared to financially support the project without relying on subsidization from its existing customers. Eastern Shore intends to charge its currently effective Part 284 Rate Schedule FT transportation rate as an initial rate. Currently, Eastern Shore has filed executed binding precedent agreements with 15-year terms for firm expansion service for the entire capacity created by the expansion project. A 10-year cost and revenue study submitted by Eastern Shore shows that the annual revenues generated by the additional capacity will exceed the annual costs of service over the 10 years by \$7,402,465. Thus, Eastern Shore's existing customers will not subsidize the expansion services.

13. Further, construction of the proposed facilities will not result in any degradation of service to Eastern Shore's existing customers. Rather, the expansion project will meet the increased market requirements of its customers, while providing certain system benefits. It will also enhance system reliability by increasing end-of-design-day linepack, which would result in higher pressures throughout Eastern Shore's system. In addition, no service on any other pipeline will be displaced since the proposed expansion services will be new services. Thus, there will not be any adverse effects on existing pipelines or their customers.

14. We also find that the project is designed to minimize impact on landowners and the surrounding environment. Eastern Shore will use existing rights-of way (ROW) and new ROW immediately adjacent to existing Eastern Shore, or Delaware Department of Transportation highway ROW for the entire project. Eastern Shore will diligently work with landowners to minimize impacts affecting their ability to: (i) construct aboveground facilities on their property; (ii) farm their property; (iii) landscape their property; or (iv) make other surface uses of their property. Thus, we find that Eastern Shore's proposal satisfies the Policy Statement's test in this regard.

15. In conclusion, the Commission finds that Eastern Shore's proposal to construct and operate pipeline facilities to expand capacity is responsive to a market need for additional firm service, as evidenced by the results of its open season. Further, we believe that the project can be constructed without adversely affecting the rates of Eastern Shore's

existing customers, existing pipelines, or landowners. Accordingly, we find that Eastern Shore's proposal is required by the public convenience and necessity.

Rates

16. Eastern Shore seeks a pre-determination supporting rolled-in rate treatment in its next general rate case. Eastern Shore's application reflects that the projected revenue for the 2006 – 2008 system expansion would exceed the estimated costs over a ten year period by approximately \$7.4 million, indicating that the project is not subsidized and would qualify for a pre-determination of rolled-in rate treatment. Eastern Shore's Exhibit N, however, indicates that for the first year project revenues exceed costs by just under \$41,000.⁵ The Phase I construction will coincide with the time Eastern Shore is required to make a section 4 general rate filing with a proposed effective date of November 1, 2006.⁶ In accordance with section 154.303 of the Commission's regulations, the section 4 filing would require Eastern Shore to use test period data that would encompass the time frame for Phase I construction. To the extent Eastern Shore experiences construction cost overruns or other unanticipated expenses (e.g., increased operation and maintenance expenses or ad valorem taxes) associated with the expansion, such increased costs could cause the annual operating costs to exceed the annual revenue, which would indicate that existing customers may in fact subsidize the expansion.

17. When evaluating whether rolled-in rate treatment is appropriate in a certificate proceeding, the decision is based on the facts, estimates and assumptions at the time the certificate is issued. Based on the information set forth in Eastern Shore's application, the Commission will: (1) approve Eastern Shore's request for a pre-determination favoring rolled-in rate treatment for this project, as rolling in the costs of the project should not result in existing shippers subsidizing the expansion; and (2) approve Eastern Shore's maximum Part 284 Rate Schedule FT rates as the initial rate for the expansion project. However, to the extent there are construction cost overruns or other unanticipated expenses that cause the annual expenses to exceed the annual revenues for

⁵ Revenues and expenses for the second year of service, which includes Phase II, reflects revenues exceeding costs by approximately \$35,000.

⁶ The rate case filing obligation is contained in Eastern Shore's settlement, filed in Docket No. RP02-34-000 on August 2, 2002. The Commission issued a letter order approving the uncontested settlement on October 10, 2002. *Eastern Shore Natural Gas Company*, 101 FERC ¶ 61,011 (2002).

the expansion, this will constitute a significant change and require a reexamination of the rolled-in rate issue in a future rate case filed by Eastern Shore.

Environment

18. On March 15, 2006, the Commission issued a Notice of Intent to Prepare an Environmental Assessment for the Proposed 2006-2008 Expansion Project and Request for Comments on Environmental Issues (NOI). We received several comment letters to the NOI which are addressed in the EA. Specifically, we received three comment letters from government agencies or representatives (Kent County Levy court, Delegate Addie C. Eckardt, and John A Hughs – Delaware Department of natural Resources and Environmental Control), all in support of the proposed project. In response to Judith L. Fisher's April 19, 2006 comment letter, the EA indicated that the project would be on the opposite side of the road from her property and would not affect a specific tree of concern to her. In response to the Yorktowne Group, LLC's April 19, 2006 comment letter, the EA indicated that the proposed project would be within the road right-of-way and therefore would not affect development plans.

19. The environmental assessment (EA) addresses geology, soils, water resources, vegetation, wildlife, threatened and endangered species, cultural resources, land use, air quality, noise, reliability and safety, and alternatives. Based on the discussion in the EA, the Commission concludes that if constructed and operated in accordance with Eastern Shore's application filed January 20, 2006, subject to the conditions listed in the Appendix, approval of this proposal would not constitute a major federal action significantly affecting the quality of the human environment.

20. Any state or local permits issued with respect to the jurisdictional facilities authorized herein must be consistent with the conditions of this certificate. The Commission encourages cooperation between interstate pipelines and local authorities. However, this does not mean that state and local agencies, through application of state or local laws, may prohibit or unreasonably delay the construction or operation of facilities approved by this Commission.⁷ Eastern Shore shall notify the Commission's environmental staff by telephone or facsimile of any environmental noncompliance identified by other federal, state, or local agencies on the same day that such agency

⁷See, e.g., *Schneidewind v. ANR Pipeline Co.*, 485 U.S. 293 (1988); *National Fuel Gas Supply v. Public Service Commission*, 894 F.2d 571 (2d Cir. 1990); and *Iroquois Gas Transmission System, L.P.*, 52 FERC ¶ 61,091 (1990) and 59 FERC ¶ 61,094 (1992).

notifies Eastern Shore. Eastern Shore shall file written confirmation of such notification with the Secretary of the Commission within 24 hours.

Conclusion

21. For the reasons set forth herein, we find, subject to the conditions discussed in the order and below, that the public convenience and necessity requires issuance of a certificate under NGA section 7(c) for Eastern Shore's proposed pipeline facilities. Thus, we grant the requested authorizations to Eastern Shore.

22. The Commission on its own motion, received and made part of the record all evidence, including the application and exhibits thereto, submitted in this proceeding, and upon consideration of the record,

The Commission orders:

(A) A certificate of public convenience and necessity is issued authorizing Eastern Shore to construct and operate facilities, as more fully described in the application and in this order.

(B) Eastern Shore shall complete the construction and place in operation the facilities within three years of the date of the order, under section 157.20(b) of the Commission's Regulations.

(C) This certificate authorization is conditioned on Eastern Shore's compliance with the provisions of all applicable Commission regulations under the NGA, including but not limited to Part 154 and section 157.20 (a), (c) (e), and (f) of our regulations.

(D) Eastern Shore shall not commence construction until it executes firm contracts equal to the capacity to which its customers have committed themselves in signed precedent agreements, all in accordance with its application in this proceeding.

(E) The authorization granted herein is subject to Eastern Shore's compliance with the specific environmental conditions listed in the Appendix. Further, Eastern Shore shall notify the Commission's environmental staff by telephone and/or facsimile of any environmental noncompliance identified by other federal, state, or local agencies on the same day that such agency notifies Eastern Shore. Eastern Shore shall file written confirmation of such notification with the Secretary of the Commission within twenty-four hours.

(F) Somerset County Economic Development Commission's motion to intervene out-of-time is granted.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

Appendix
Eastern Shore Natural Gas Company
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As recommended in the EA, this authorization includes the following condition(s):

1. Eastern Shore shall follow the construction procedures and mitigation measures described in its application and supplements (including responses to staff data requests) and as identified in the EA, unless modified by this Order. Eastern Shore must:
 - a. request any modification to these procedures, measures, or conditions in a filing with the Secretary of the Commission (Secretary);
 - b. justify each modification relative to site-specific conditions;
 - c. explain how that modification provides an equal or greater level of environmental protection than the original measure; and
 - d. receive approval in writing from the Director of the Office of Energy Projects (OEP) **before using that modification.**
2. The Director of OEP has delegation authority to take whatever steps are necessary to ensure the protection of all environmental resources during construction and operation of the project. This authority shall allow:
 - a. the modification of conditions of this Order; and
 - b. the design and implementation of any additional measures deemed necessary (including stop work authority) to assure continued compliance with the intent of the environmental conditions as well as the avoidance or mitigation of adverse environmental impact resulting from project construction and operation.
3. **Prior to any construction**, Eastern Shore shall file an affirmative statement with the Secretary, certified by a senior company official, that all company personnel, environmental inspectors, and contractor personnel will be informed of the environmental inspector's authority and have been or will be trained on the implementation of the environmental mitigation measures appropriate to their jobs **before** becoming involved with construction and restoration activities.
4. The authorized facility locations shall be as shown in the EA, as supplemented by filed alignment sheets. **As soon as they are available, and before the start of construction**, Eastern Shore shall file with the Secretary any revised detailed

survey alignment maps/sheets at a scale not smaller than 1:6,000 with station positions for all facilities approved by this Order. All requests for modifications of environmental conditions of this Order or site-specific clearances must be written and must reference locations designated on these alignment maps/sheets.

Eastern Shore's exercise of eminent domain authority granted under Natural Gas Act (NGA) section 7(h) in any condemnation proceedings related to this Order must be consistent with these authorized facilities and locations. Eastern Shore's right of eminent domain granted under NGA section 7(h) does not authorize it to increase the size of its natural gas pipeline to accommodate future needs or to acquire a right-of-way for a pipeline to transport a commodity other than natural gas.

5. Eastern Shore shall file with the Secretary detailed alignment maps/sheets and aerial photographs at a scale not smaller than 1:6,000 identifying all route realignments or facility relocations, and staging areas, pipe storage yards, new access roads, and other areas that would be used or disturbed and have not been previously identified in filings with the Secretary. Approval for each of these areas must be explicitly requested in writing. For each area, the request must include a description of the existing land use/cover type, and documentation of landowner approval, whether any cultural resources or federally listed threatened or endangered species would be affected, and whether any other environmentally sensitive areas are within or abutting the area. All areas shall be clearly identified on the maps/sheets/aerial photographs. Each area must be approved in writing by the Director of OEP **before construction** in or near that area.

This requirement does not apply to (route variations required herein or) extra workspace allowed by the Upland Erosion Control, Revegetation, and Maintenance Plan, minor field realignments per landowner needs and requirements which do not affect other landowners or sensitive environmental areas such as wetlands.

Examples of alterations requiring approval include all route realignments and facility location changes resulting from:

- a. implementation of cultural resources mitigation measures;
- b. implementation of endangered, threatened, or special concern species mitigation measures;
- c. recommendations by state regulatory authorities; and

- d. agreements with individual landowners that affect other landowners or could affect sensitive environmental areas.
6. Within 60 days of the acceptance of this certificate and before construction begins, Eastern Shore shall file an initial Implementation Plan with the Secretary for review and written approval by the Director of OEP describing how Eastern Shore will implement the mitigation measures required by this Order. Eastern Shore must file revisions to the plan as schedules change. The plan shall identify:
- a. how Eastern Shore will incorporate these requirements into contract bid documents, construction contracts (especially penalty clauses and specifications), and construction drawings so that the mitigation required at each site is clear to onsite construction and inspection personnel;
 - b. the number of environmental inspectors assigned per project area, and how the company will ensure that sufficient personnel are available to implement the environmental mitigation;
 - c. company personnel, including environmental inspector and contractors, who will receive copies of the appropriate material;
 - d. what training and instruction Eastern Shore will give to all personnel involved with construction and restoration (initial and refresher training as the project progresses and personnel change), with the opportunity for OEP staff to participate in the training session(s);
 - e. the company personnel (if known) and specific portion of Eastern Shore's organization having responsibility for compliance;
 - f. the procedures (including the use of contract penalties) Eastern Shore will follow if noncompliance occurs; and
 - g. for each discrete facility, a Gantt or PERT chart (or similar project scheduling diagram), and dates for:
 - 1. the completion of all required surveys and reports;
 - 2. the mitigation training of onsite personnel;
 - 3. the start of construction; and
 - 4. the start and completion of restoration.
7. Eastern Shore shall employ at least one environmental inspector on its project. The environmental inspector shall be:
- a. responsible for monitoring and ensuring compliance with all mitigative measures required by this Order and other grants, permits, certificates or other authorizing documents;

- b. responsible for evaluating the construction contractor's implementation of the environmental mitigation measures required in the contract (see condition 6 above) and any other authorizing document;
 - c. empowered to order correction of acts that violate the environmental conditions of this Order, and any other authorizing document;
 - d. a full-time position, separate for all other activity inspectors;
 - e. responsible for documenting compliance with the environmental conditions of this Order, as well as any environmental conditions/permit requirements imposed by other federal, state, or local agencies; and
 - f. responsible for maintaining status reports.
8. Eastern Shore shall file updated status reports prepared by the (head) environmental inspector with the Secretary on a **weekly** basis **until** all construction-related activities, including restoration and initial permanent seeding, are complete on its project. On request, these status reports will also be provided to other federal and state agencies with permitting responsibilities. Status reports shall include:
- a. the current construction status of the project, work planned for the following reporting period, and any schedule changes for stream crossings or work in other environmental sensitive areas;
 - b. a listing of all problems encountered and each instance of noncompliance observed by the environmental inspector(s) during the reporting period (both for the conditions imposed by the Commission and any environmental conditions/permit requirements imposed by other federal, state, or local agencies);
 - c. corrective actions implemented in response to all instances of noncompliance, and their cost;
 - d. the effectiveness of all corrective actions implemented;
 - e. a description of any landowner/resident complaints which may relate to compliance with the requirements of this Order, and the measures taken to satisfy their concerns; and
 - f. copies of any correspondence received by Eastern Shore from other federal, state, or local permitting agencies concerning instances of noncompliance, and Eastern Shore's response.
9. Eastern Shore must receive written authorization from the Director of OEP **before commencing service** on each segment of its project, respectively. Such authorization will only be granted following a determination that rehabilitation and restoration of the sites are proceeding satisfactorily.

10. **Within 30 days of placing the certificated facilities in service**, Eastern Shore shall file an affirmative statement with the Secretary, certified by a senior company official:
 - a. that the facilities have been constructed in compliance with all applicable conditions, and that continuing activities will be consistent with all applicable conditions; or
 - b. identifying which of the certificate conditions Eastern Shore has complied with or will comply with. This statement shall also identify any areas along the ROW where compliance measures were not properly implemented, if not previously identified in filed status reports, and the reason for noncompliance.
11. **Prior to construction**, Eastern Shore shall file with the Secretary a description of how trench dewatering would be conducted. This description should describe protection measures that would be implemented to prevent erosion. This description should also outline how trench water would be discharged.
12. **Prior to construction**, Eastern Shore shall file with the Secretary for review and written approval by the Director of OEP, a bog turtle survey report prepared by a qualified biologist. This report should be consistent with the recommendations put forth by Department of Natural Resources and Environmental Control in its April 24, 2006 letter.
13. Eastern Shore shall include the detailed plans for avoiding archaeological sites 36Ch852, 853, and 854 in its pre-construction implementation plan for review and approval by the Director of OEP.
14. Eastern Shore shall defer construction and use of facilities and staging, storage, and temporary work areas and new or to be improved access roads until it files with the Secretary cultural resource reports, as appropriate, and the State Historic Preservation Office's comments; and the Director of OEP reviews and approves all reports and notifies Eastern Shore in writing that it may proceed.

Note: For additional information see OEP's "*Guidelines for Reporting on Cultural Resource Investigations*" (December, 2002).

All material filed with the Commission containing **location, character, and ownership information** about cultural resources must have the cover and any

relevant pages therein clearly labeled in bold lettering: **“CONTAINS PRIVILEGED INFORMATION--DO NOT RELEASE.”**

15. For the residences closer than 25 feet to the construction work area which Eastern Shore has not filed a site specific plan for, Eastern Shore shall file a site-specific plan which includes;
 - a. a description of construction techniques to be used (such as reduced pipeline separation, centerline adjustment, use of stove-pipe or drag-section techniques, working over existing pipelines, pipeline crossover, bore, etc.), and include a dimensioned site plan that shows;
 - (1) the location of the residence in relation to the new pipeline and, where appropriate, the existing pipelines;
 - (2) the edge of the construction work area;
 - (3) the edge of the new permanent right-of-way; and
 - (4) other nearby residences, structures, roads, or waterbodies.
 - b. a description of how Eastern Shore will ensure that the trench is not excavated until the pipe is ready for installation and that the trench is backfilled immediately after pipe installation;
 - c. evidence of landowner concurrence if the construction work area and fencing will be located within 10 feet of a residence; and
 - d. a description of how Eastern Shore either has or would notify landowners of construction activities, provide access to residences during construction activities, maintain traffic flow, reduce hazard of open ditches when construction activities are not in progress, and minimize noise and fugitive dust from construction activities.
16. If Eastern Shore determines 24-hour Horizontal Directional Drill is necessary, Eastern Shore shall file a mitigation plan with the Secretary, for review and approval by the Director of OEP, indicating how noise levels will be controlled so they do not exceed 55 dBA Ldn at any nearby noise sensitive areas, or alternatively, what mitigation would be offered to the users of those noise